

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 ARTHUR FULFORD, on behalf of himself
12 and all others similarly situated,

13 Plaintiff,

14 v.

15 LOGITECH, INC.,

16 Defendant.
17

No. C-08-2041 MMC

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS**

18 Before the Court is defendant Logitech, Inc.'s ("Logitech") "Motion to Dismiss
19 Plaintiff's Second Amended Complaint," filed February 20, 2009. Plaintiff Arthur Fulford
20 ("Fulford") has filed opposition, to which Logitech has replied. Having read and considered
21 the papers filed in support of and in opposition to the motion, the Court rules as follows.

22 1. Contrary to Fulford's argument, to the extent Fulford's Second Cause of Action
23 ("Violation of Cal. Civil Code § 1710 Deceit and Common Law Fraud") alleges claims of
24 "deceit based on fraudulent concealment/nondisclosure" (see SAC ¶¶ 97-109), such cause
25 of action is subject to dismissal. Fulford's reliance on LiMandri v. Judkins, 52 Cal. App. 4th
26 326 (1997), is unavailing. In particular, as LiMandri makes clear, no duty to disclose can
27 arise in the absence of either a fiduciary duty or a transaction between the parties. See id.
28 at 336-37 (holding, where fiduciary duty does not exist, "circumstances in which
nondisclosure may be actionable presuppose[] the existence of some other relationship

1 between the plaintiff and defendant in which a duty to disclose can arise”; noting “such a
 2 relationship can only come into being as a result of some sort of transaction between the
 3 parties”) (emphasis in original). Here, Fulford has neither argued nor alleged that Logitech
 4 owed him any fiduciary duty, nor has Fulford argued or alleged that he entered into any
 5 transaction with Logitech. (See SAC ¶ 22 (alleging Fulford purchased his H1000 Remote
 6 from a friend).)¹

7 2. In all other respects, for the reasons stated by Fulford in his opposition at 8:19-
 8 9:5, 10:20-17:17, 21:6-22:17, and 23:17-25:6, Logitech’s motion will be denied.²

9 CONCLUSION

10 For the reasons stated above, Logitech’s Motion to Dismiss is hereby GRANTED in
 11 part and DENIED in part, as follows:

12 1. To the extent Fulford’s Second Cause of Action alleges claims of “deceit based
 13 on fraudulent concealment/nondisclosure” (see SAC ¶¶ 97-109), such cause of action is
 14 DISMISSED without leave to amend.

15 2. In all other respects, the motion is DENIED.

16 **IT IS SO ORDERED.**

17 Dated: March 26, 2009


 MAXINE M. CHESNEY
 United States District Judge

21 ¹Fulford’s reliance on Stickrath v. Globalstar, Inc., No. C07-1941 TEH, 2008 WL
 22 344209 (N.D. Cal. Feb. 6, 2008), likewise is unavailing. In Stickrath, unlike here, each of
 the plaintiffs had entered into a purchase agreement with the defendant. See id. at *1.

23 ²In its reply, Logitech argues for the first time that Fulford lacks standing to pursue
 24 his claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et
 25 seq., and California’s False Advertising Law, Cal. Bus. & Prof. Code § 17500 et seq., on
 the ground Fulford is not entitled to restitution. (See Order filed Nov. 14, 2008, at 5:2-10.)
 26 In support of such argument, Logitech cites to Walker v. Geico Gen. Ins. Co., --- F.3d ---,
 27 Nos. 07-15357, 07-15424, 2009 WL 595563 (9th Cir. Mar. 10, 2009), which, Logitech
 points out, was not decided until after Fulford had filed his opposition to the instant motion.
 28 Walker, however, contains no analysis of the UCL’s standing provision and, in concluding
 the plaintiff therein lacked standing under the UCL, relies on Buckland v. Threshold Enters.,
Ltd., 155 Cal. App. 4th 798 (2007), a decision issued prior to the inception of the instant
 action. Accordingly, the Court declines to consider Logitech’s new argument at this time.